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10/646,611	08/22/2003	Guy Simon Dawson	37261P087	9810

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

EXAMINER

LUONG, VINH

ART UNIT PAPER NUMBER

3682

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/646,611	Applicant(s) DAWSON, GUY SIMON	
	Examiner Vinh T. Luong	Art Unit 3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.


Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


Vinh T. Luong
Primary Examiner

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Attachment</u> |

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1. The Amendment filed on November 10, 2005 has been entered.
2. The replacement drawings were received on November 10, 2005. These drawings are unacceptable because the drawings introduce new matter. For example, Figs. 2-6 now show that the handle member 10 is made of metal in accordance with drawing symbols for draftsman in MPEP 608.02. However, the original disclosure does not disclose that the handle member 10 is made of metal. The showing of a specific material for the handle within a full spectrum of possible materials is considered under the present disclosure to be new matter.
3. The *original* drawings are objected to because the drawings do not comply with 37 CFR 1.84 for the reasons, *e.g.*, listed below:

(a) The various parts in Fig. 1 should be connected by connecting lines and/or embraced by a bracket in order to show their relationship or their order of assembly; and

(b) The cross section must be set out and drawn to show all of the materials as they are shown in the view from which the cross section was taken.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The listing of references in the specification (e.g., pages 1 and 2) is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms, such as, "moveable," "can be pivoted," and "operable" in claim 1 are vague and indefinite in the sense that things, which may be done, are not required to be done. For example, the handle member can be, but is not required structurally to be pivoted to a second position. See "crimpable" and "discardable" in *Mathis v. Hydro Air Industries*, 1 USPQ2d 1513, 1527 (D.C. Calif. 1986), "removable" in *In re Burke Inc.*, 22 USPQ2d 1368, 1372 (D.C. Calif. 1992), and "comparable" in *Ex parte Anderson*, 21 USPQ2d 1241, 1249 (Bd. Pat. App. & Inter. 1992).

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7. Claims 1-18, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Harvey et al. (US Patent No. 6,450,063 B1).

Regarding claim 1, Harvey teaches a handle which includes a handle member 10 pivotally coupled to a base 20 and a locking mechanism which releasably locks the handle member 10 in a first position (Fig. 2) relative to the base 20, said first position (Fig. 2) corresponding to an in-use position of the handle member 10, the locking mechanism including a moveable locking member 25 within the handle member 10, said locking member 10, in use, being movable between a locking position (Fig. 2) where the locking member 10 performs a blocking action between the handle member 10 and the base 20 to prevent pivotal movement of the handle member 10 relative to the base 20 and a release position (Fig. 3) where said blocking action is removed to release, the handle member 10, wherein, in use, the handle member 10 can be pivoted to a second position (Fig. 3), the locking member 25 being coupled to a push button 24 located at an exterior surface of the handle member 10, the push button 24 being operable, in use of the handle 10, wherein a pushing action applied to the push button 24 causes the locking member 25 to move to said release position (Fig. 3).

Claim 1 and other claims below are anticipated by Harvey because each claimed element is “*read on*” or “*fully met*” by Harvey. Note that, in the locking position shown in Fig. 2, when the push button 24 is pushed inwardly into the cavity 17 in the direction of the arrow 17 in Fig. 3, the button 24 is inherently bent outwardly to cause the locking member 25 moving outwardly to the release position as seen in Fig. 3. In other words, Harvey’s handle is capable of performing Applicant’s claimed functional statements. Put in another fashion, the functional limitations of Applicant’s claims are not given patentable weight when those limitations are

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inherent in the Harvey reference. See *In re Schreiber*, 44 USPQ2d 1429 (CAFC 1997)(A reference may be from an entirely different field of endeavor than that of the claimed invention or may be directed to an entirely different problem from the one addressed by the inventor, yet the reference will still anticipate if it explicitly or inherently discloses every limitation recited in the claims).

Regarding claim 2, the push button 24 includes a head (see Fig. 1 in the Attachment), which is slidably located in a recess (Fig. 2, Att.) the handle member 10.

Regarding claim 3, the peripheral shape of the recess (Fig. 2, Att.) substantially corresponds to a peripheral shape of the button 24.

Regarding claim 4, the locking member 24 is biased into said locking position by a biasing mechanism 24. Note that Harvey's push button, locking member, and biasing mechanism are integrally formed.

Regarding claim 5, the biasing mechanism 24 includes a leaf spring 24.

Regarding claim 6, the leaf spring 24 is fixed to the locking member 25 because the leaf spring 24 is one-piece formed with the locking member 25 and has a distal end (at 26 in Fig. 1) engaging with a part of the handle member 10.

Regarding claim 7, see a stop 25 (Fig. 2, Att.) to prevent movement of the locking member 25 under action of the biasing mechanism 24 from moving beyond the locking position (Fig. 2). *Ibid.*, col. 3, lines 7-25. Alternatively, see a stop 37 (Fig. 3) to prevent movement of the locking member 25 under action of the biasing mechanism 24 from moving beyond the locking position.

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Regarding claim 8, the stop 25 is a lip 25 projecting from the locking member 25 and engaged with an engagement surface 30 of the handle member 10 when the handle 10 is in the first position (Fig. 2).

Regarding claim 9, the blocking action is created by the locking member 25 having a locking portion 25, which engages between a surface 27 of the pivot base 20 and a part 30 of the handle member 10 when the locking member 25 is in said locking position (Fig. 2).

Regarding claim 10, the locking member 25 includes a profiled portion 25 (Att.), which provides a clearance (at 23 in Fig. 3) between the locking portion 25 and the pivot base 20 when the locking member 25 is in the release position (Fig. 3).

Regarding claim 11, the profiled portion 25 includes a contact surface (Att.), which contacts a profiled surface 27, 28 of the pivot base 20 during movement of the handle between the first and second positions (Figs. 2 and 3).

Regarding claim 12, see regarding claim 2 above.

Regarding claim 13, the recess (Fig. 2, Att.) includes a contact surface 30, which is contacted by the head (Fig. 1, Att.) when the locking member 25 is in the release position.

Regarding claims 14-17, see regarding claims 4, 5, 7, and 8.

Regarding claim 18, the lip 25 projects from the locking portion 25. The engagement surface 30 is formed by a wall (Att., Figs. 2 and 3) in the handle member 10. The wall (Att.) further forms a second engagement surface (Att.). The locking portion 25 of the locking member 25 is located between second engagement surface (Att.) and the pivot base 20 to create the blocking action.

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8. Claim 1, as best understood, is further rejected under 35 U.S.C. 102(b) as being anticipated by Vetter (US Patent No. 5,560,082).

Vetter teaches a handle which includes a handle member 16 pivotally coupled to a base 50 and a locking mechanism which releasably locks the handle member 16 in a first position (Fig. 2. See col. 3, lines 40-53 and col. 5, lines 36-51) relative to the base 50, said first position (Fig. 2) corresponding to an in-use position of the handle member 16, the locking mechanism including a moveable locking member 84 within the handle member 16, said locking member 84, in use, being movable between a locking position (Fig. 2) where the locking member 84 performs a blocking action between the handle member 16 and the base 50 to prevent pivotal movement of the handle member 16 relative to the base 50 and a release position (Fig. 2) where said blocking action is removed to release, the handle member 16, wherein, in use, the handle member 16 can be pivoted to a second position (Fig. 2), the locking member 84 being coupled to a push button 84 located at an exterior surface of the handle member 16, the push button 84 being operable, in use of the handle 16, wherein a pushing action applied to the push button 84 causes the locking member 84 to move to said release position (Fig. 2).

Note that, in the locking or use position in Fig. 2, when the push button 84 is pushed, the locking member 84 is pushed or moved therewith since the push button and the locking member are formed as one piece. In other words, when the push button 84 is pushed, the locking member 84 is moved therewith to the release or second position as shown in Fig. 2. Therefore, Vetter's handle is capable of performing Applicant's claimed functional statement. See *In re Schreiber, supra*.

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9. Applicant's arguments filed November 10, 2005 have been fully considered but they are not persuasive.

I. Drawings

Applicant asserts that no new matter is added. However, the drawings now show that the handle is made of metal. The original disclosure does not convey the concept that the handle 10 is made of metal. Thus, the replacement drawings introduce new matter. See *In re Anderson*, 176 USPQ 331 (CCPA 1973). If Applicant specifically points out the line(s) and page(s) of the original disclosure wherein the Applicant disclosed that the handle is made of metal, the replacement drawings would be accepted as no new matter.

II. 35 USC 112

Claims 1-18 are indefinite as seen in the rejection above.

III. 35 USC 102

Harvey

At the outset, Applicant asserts that the element 25 of Harvey *is not* a locking member, but simply an element of *a detent arrangement*.

Applicant apparently uses an “*ipsissimis verbis*” test that requires the same terminology in the art in order to find anticipation. See footnote 11 of *AKZO N.V. v. International Trade Commission*, 1 USPQ2d 1241, 1245 (CAFC 1986). It is well settled that an inventor can be his/her own lexicographer. Thus, Harvey does not need to use the same terminology as Applicant uses. More importantly, it is well settled that an anticipatory reference needs not duplicate word for word what is in the claims. Anticipation can occur when a claimed limitation is “inherent” or

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otherwise implicit in the relevant reference. *Standard Haven Products Inc. v. Gencor Industries, Inc.*, 21 USPQ2d 1321, 1328 (Fed. Cir. 1991).

In the instant case, Harvey's member 25 is a locking member since it locks or retains the handle 10 in the use position by abutting against the surface 27 of the base 20 as described in col. 2, line 62 through col. 3, line 15. Therefore, Harvey's member 25 "reads on" Applicant's locking member.

Second, Applicant contends that claim 1 recited that the locking member performs "a blocking action." The Examiner respectfully submits that Fig. 2 of Harvey plainly shows that the member 25 performs the blocking action to hold the handle 10 in "use" position.

Third, Applicant asserts that claim 1 recites that the locking member is "coupled to a push button." The Examiner respectfully submits that the locking member 25 is formed as one piece with the spring clip 24. The user clearly can use the hand to push the spring 24 since the spring 24 is accessible at an exterior surface of the handle 10 as shown in Figs. 2 and 3. On the other hand, since the locking member 25 and the push button 24 are one piece formed, thus, they are inherently coupled to each other. Therefore, the spring 24 "reads on" Applicant's claimed "push button."

For the reasons set forth above, claim 1 is not patentable.

Vetter et al.

First, using the same "*ipsissimis verbis*" test, Applicant asserts that Vetter does not describe a locking mechanism. However, Fig. 2 of Vetter shows the mechanism 84 that blocks or locks the handle 16 in the first, in use position. Thus, Vetter's mechanism 84 reads on Applicant's locking mechanism.

Second, Applicant alleges that Vetter's locking member 84 is within the handle 16, thus, it is not *accessible* at an exterior surface of the handle.

Applicant's contention is not based on the limitations appearing in the amended claim. In fact, Applicant has canceled the term "accessible" in claim 1. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In the case at hand, the claim merely calls for the push button *located* at an exterior surface of the handle member. Since Vetter's button 84 is located at the exterior surface 16 in Fig. 4 of the handle 16, thus, it meets Applicant's claim. In addition, the terms such as "exterior" or "interior" are relative terms. In the absence of a referential datum in Applicant's claim, Vetter's surface 16 in Fig. 4 of Harvey is the exterior surface since it is not obstructed by the housing 82 as seen in Fig. 2.

Finally, Applicant notes that Vetter (like Harvey) effectively represents the prior art described at the first full paragraph on page 3 of Applicant's specification.

The issue whether Vetter (like Harvey) effectively represents the prior art described in Applicant's specification or not is immaterial. The material issue is whether Vetter (or Harvey) "reads on" Applicant's claims. It is well settled that anticipation law requires distinction be made between invention described or taught and invention claimed. It does not require that the reference "teach" what subject patent application teaches, it is only necessary that the claim under attack, as construed by the Court, "*read on*" something disclosed in the reference, *i.e.*, all limitations of the claim are found in reference, or are "*fully met*" by it. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781, 789 (CAFC 1983). In the instant case, Applicant's claim 1 is not

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distinguished from Vetter (or Harvey) because Applicant's claim does not specifically call for, *e.g.*, the locking member and the push button being formed separately.

For the foregoing reasons, the rejection under the art is maintained.

10. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

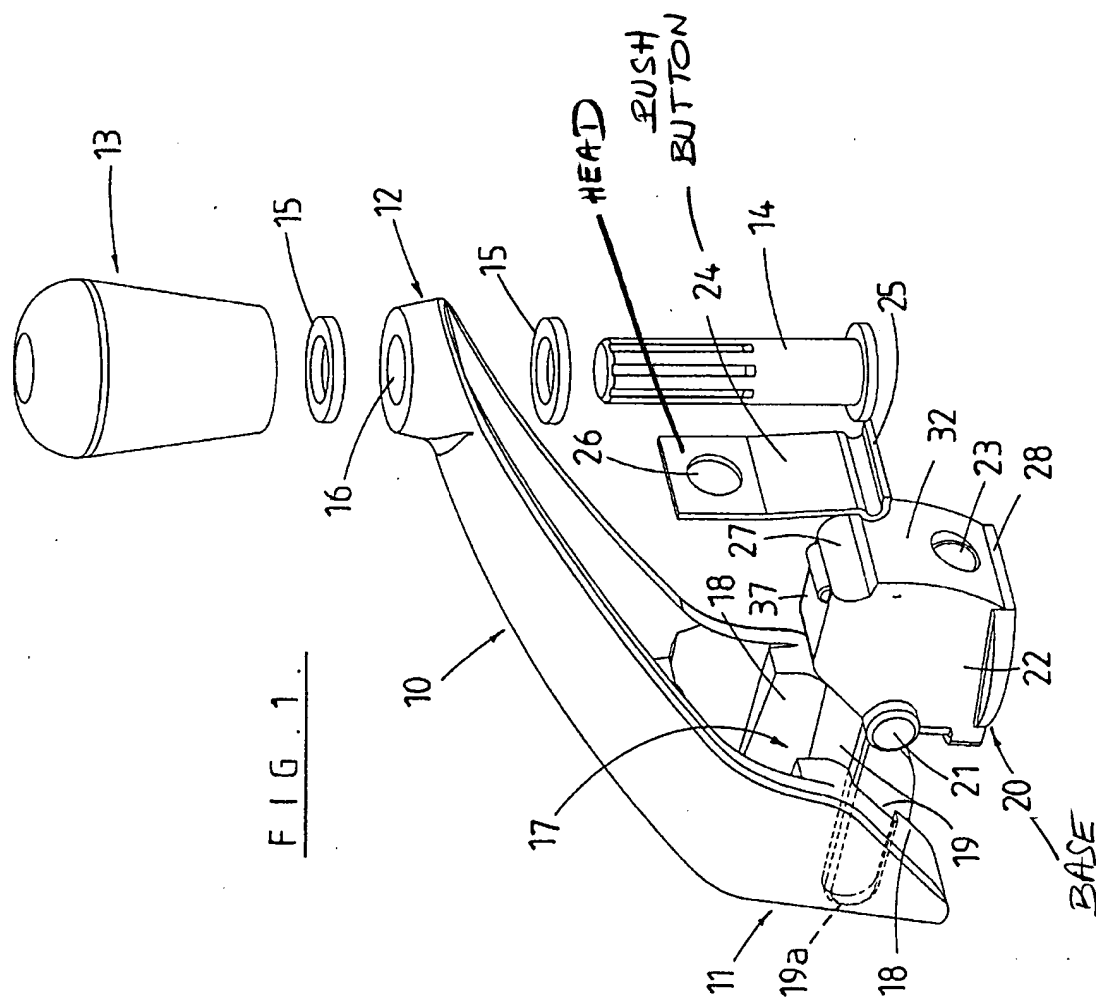
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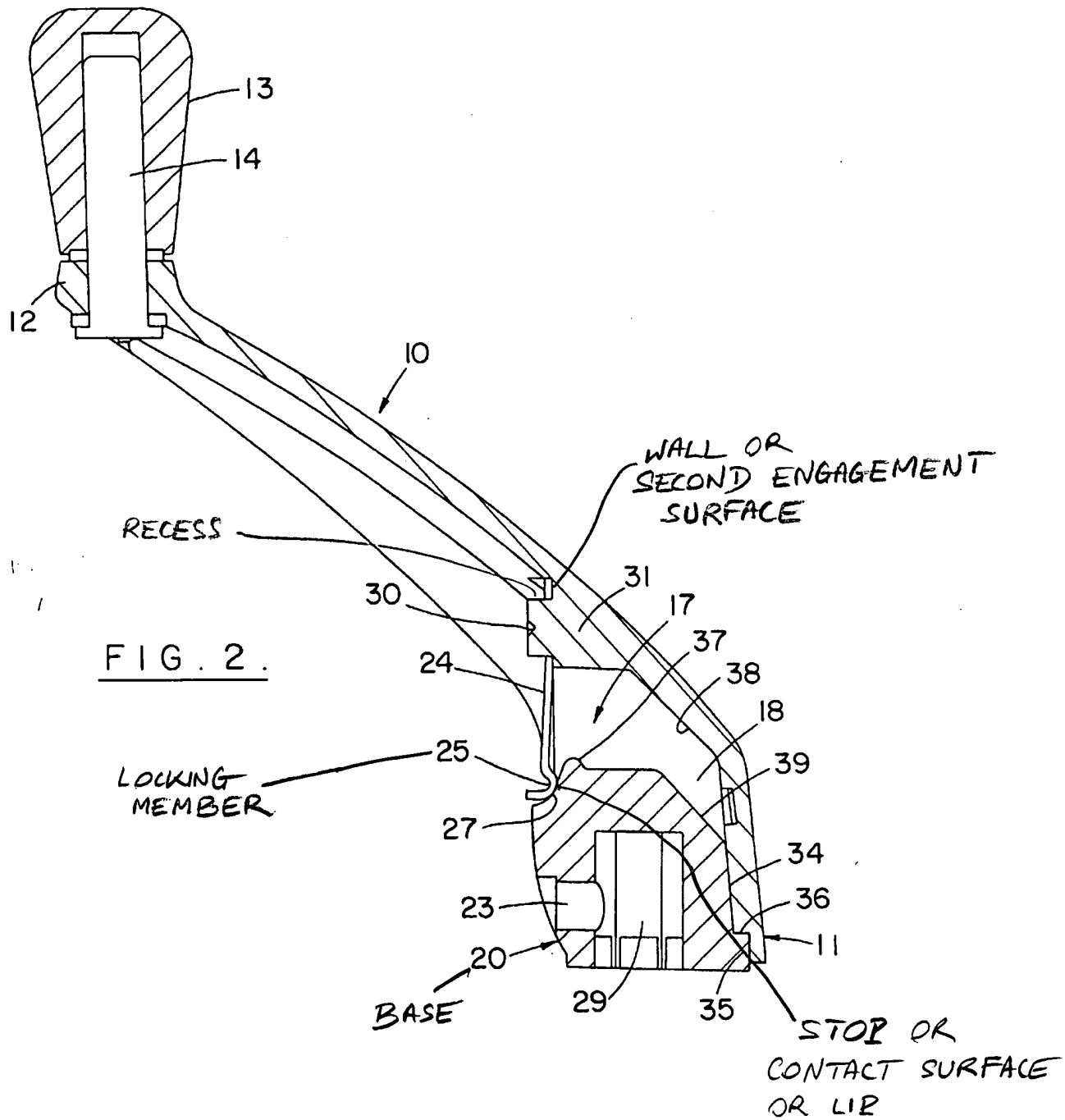
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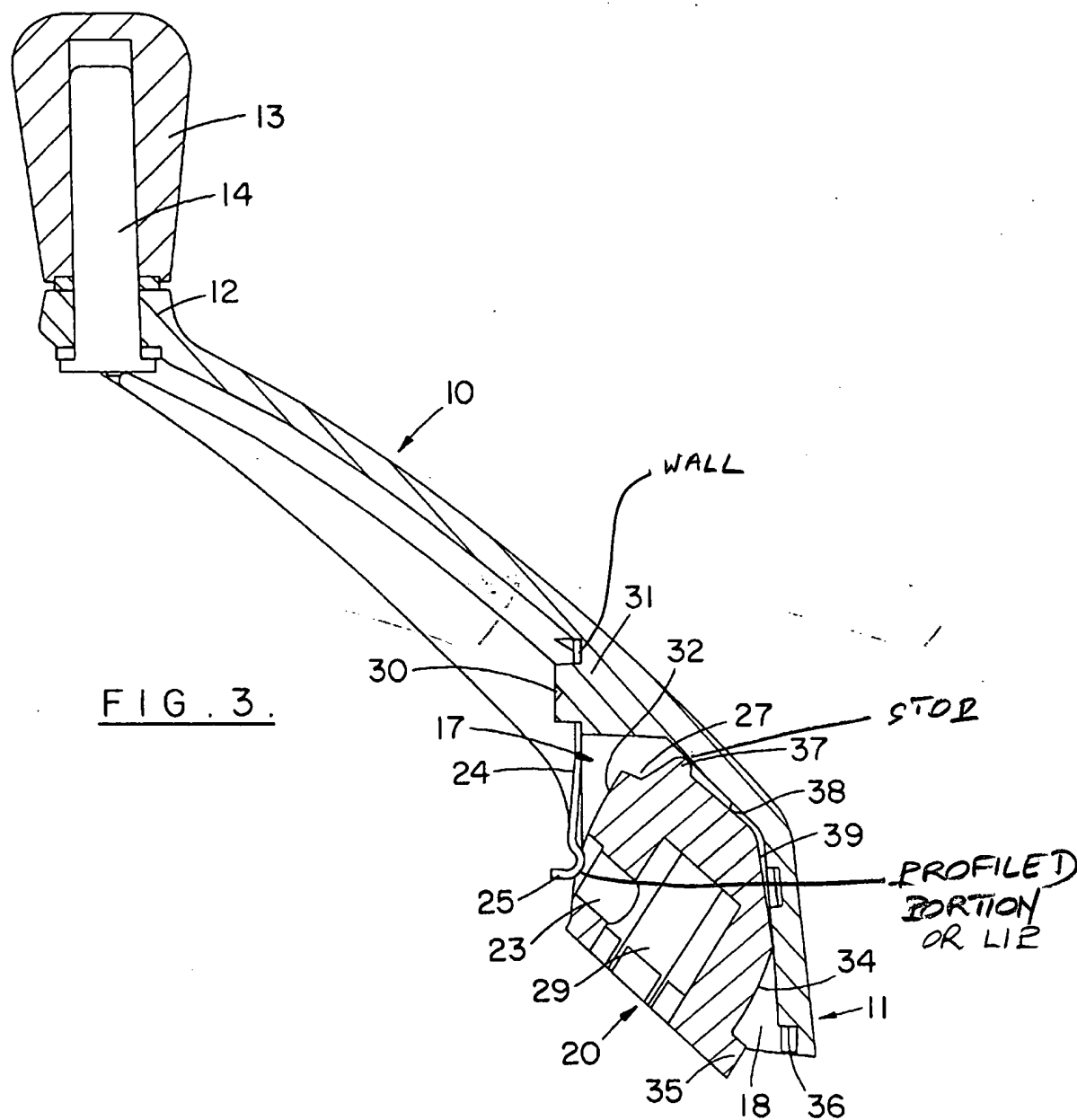


Vinh T. Luong
Primary Examiner

ATTACHMENT







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